

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: PROCESSED EGG PRODUCTS: MDL NO. 2002  
ANTITRUST LITIGATION 08-MDL-02002

PHILADELPHIA, PA

NOVEMBER 25, 2019

BEFORE: THE HONORABLE GENE E.K. PRATTER, J.

TRANSCRIPT OF TRIAL PROCEEDINGS

DAY 16

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(Transcript produced by mechanical shorthand via C.A.T.)

1 Q. At some point did UEP approach you about chairing the  
2 Scientific Advisory Committee?

3 A. Yes, actually the first thing that happened -- there was  
4 a meeting in late '97 or early '98, I can't recall, in which  
5 the -- Al Pope and Gene Gregory asked to just come and meet  
6 with us. There were a couple producers. I asked Joy Mench  
7 from UC Davis to join us, I believe, as well as Scotti or  
8 Patricia Hester is her -- not her nickname -- to join us and  
9 we just had a discussion about the current state of animal  
10 welfare and we looked at their guidelines and we said,  
11 basically, you do not have science-based guidelines. You've  
12 just recorded how you do business, you've just recorded best  
13 practices, and it's really not science-based.

14 A few months after that, I got a call from Al Pope  
15 asking if I would constitute and chair a committee to look at  
16 science-based animal welfare for the laying hen industry.

17 Q. Did you have an understanding at that time as to why UEP  
18 asked for science-based guidelines?

19 A. It's the tail end of a cold. I'm sorry.

20 Q. That's okay.

21 A. It's the good end of the cold. And I almost spilled  
22 water all over myself.

23 They were being really hit hard. It was -- the  
24 Internet had been invented by that time and they were being  
25 hit hard with animal rights activists, and in particular one

1 group, Compassion Over Killing, and there were a lot of  
2 pictures of laying hens in cages, crammed together, no  
3 feathers, looked really bad, and that's the same type of thing  
4 that was hitting the food industry.

5 In the egg industry was one of the first areas,  
6 other than the slaughter -- I don't know how -- a better way  
7 to put it other than the harvesting industry or the  
8 slaughterhouse industry had actually been pushed first, and  
9 change was needed.

10 Q. What made you accept the appointment as chair of the  
11 Scientific Advisory Committee?

12 A. Well, first of all, I believed they were sincere and I  
13 consulted with some scientists that I trusted, Scotti Hester  
14 at Purdue, Joy Mench at UC Davis, who's probably one of the,  
15 in our generation, the expert in hen welfare, hen behavior,  
16 and I felt they were serious. I had been involved with some  
17 other interactions with the pork industry, and they were not  
18 serious about it. They were more -- they were gearing their  
19 efforts really more -- I don't think intentionally, but they  
20 were gearing their efforts more to maintaining the status quo,  
21 and it was clear the status quo was not going to be  
22 maintained. It was just a matter of how that was going to  
23 change.

24 Q. At this time, were there other companies that had begun  
25 addressing animal welfare issues?

1 science-based guidelines but they had to be practical.

2           So you needed advice from the producers. If we made  
3 guidelines that only, you know, reflected 1 percent of  
4 250 million hens at the time, it wouldn't be practical and  
5 wouldn't really affect welfare. So we were trying to be  
6 practical and understand the industry.

7 Q. Did UEP decide who would be on the Scientific Advisory  
8 Committee?

9 A. No.

10 Q. Did you ever have to replace members on the committee?

11 A. Yes, we did.

12 Q. And when you did, how did you do that?

13 A. We had a discussion among the group. I would recommend  
14 individuals after a discussion or we would just simply say,  
15 you know, Adele, Adele Douglass, she left, not for any bad  
16 reason, but she moved on to something else. So we had a  
17 discussion, let's bring somebody in. So, for example, we  
18 brought in Gail Golab from the American Veterinary Medical  
19 Association.

20 Q. Was the Scientific Advisory Committee part of UEP?

21 A. No. It was a standing committee, but I would say we were  
22 scientifically independent. We all came from different  
23 organizations, and especially those of us from universities or  
24 USDA, I mean, that's what we do. We interact with industry,  
25 we -- we try to solve problems, and that's in effect what

1 names back on it. It was a matter of that transition.

2 Q. Do you recall when the Scientific Advisory  
3 Committee's view regarding having their names published on the  
4 UEP Guidelines changed?

5 A. I don't know, 2008 or 2010.

6 Q. Dr. Armstrong, the jury's heard a lot about Gene Gregory.  
7 Can you tell the jury a little bit about your experience with  
8 Gene Gregory as it relates to the Producer Committee for  
9 Animal Welfare, as well as Mr. Gregory's participation on the  
10 Scientific Advisory Committee?

11 A. Yeah. I have a lot of interactions with Gene for many,  
12 many years, and Gene deeply cared about the industry, and Gene  
13 deeply cared about science-based guidelines, but he didn't  
14 always understand the science. So there would be frequent  
15 back and forth with the scientists, but then there would also  
16 be frequent back and forth with producers. And Gene didn't  
17 have much of a filter and he sometimes was an equal  
18 opportunity offender. And he and Joy Mench would go  
19 toe-to-toe on things. And today, I don't know if they see  
20 each other since Gene's retired, but before Gene retired they  
21 were very good friends, because it's just the dynamics of  
22 Gene's personality. But he deeply -- he deeply cared about  
23 the animal welfare issue and -- now when we first went on that  
24 tour it would have been easy to take us to a facility that was  
25 not 48 square inches with ammonia that made you cry and manure

1 dropping on the birds, and it was really illustrative of the  
2 industry at that time. And so I believe that, you know, Gene  
3 indeed cared about animal welfare, and the science, but as  
4 much as he understood the science.

5 Q. I'd like you to turn, Dr. Armstrong, please, to Tab 5 in  
6 your binder. This is a document that is mark as Defendants'  
7 Exhibit 175.

8 MS. SUMNER: This document is already in evidence.  
9 May I publish it to the jury?

10 THE COURT: Yes.

11 BY MS. SUMNER:

12 Q. Dr. Armstrong, do you recognize this document?

13 A. Yes.

14 Q. Can you tell the jury what it is, please.

15 A. This is the Animal Husbandry Guidelines for the U.S.  
16 laying flock, and I don't remember if it's the first or  
17 second, but it's 2002 edition and so this is the translation  
18 of the committee of our work to the industry.

19 Q. So just to be clear, these are the UEP Guidelines?

20 A. These are UEP Guidelines.

21 Q. Generally, were there some differences between the  
22 Scientific Advisory Committee's September 2000 recommendations  
23 and the UEP Guidelines?

24 A. Yes. There were some differences, largely due to A, a  
25 transition; B, not understanding what, you know, what we know

1 the humane treatment of egg-laying hens?

2 A. Yes, I did, and we particularly pointed that out after,  
3 you know, the transition was coming to a close, and it became  
4 apparent that some did not believe that that was a minimum and  
5 they didn't need to be at that minimum and that really caused  
6 the committee to react to that as well.

7 Q. And who were those who had that view?

8 A. Well, a large part of it was the breaker industry, the  
9 fluid eggs don't have as direct a customer, and it was also  
10 consistent with the same producers that were pushing back at  
11 the very beginning. And that even to this day, I've had  
12 producers say if the customer does not demand the UEP  
13 guidelines then we should still be able to produce at 48  
14 square inches. And our view today is that not following the  
15 minimum guidelines with cages is not humane for the hen.

16 Q. Did you raise that issue with McDonald's at any point in  
17 time?

18 A. I did. As I served on McDonald's panel, I had individual  
19 conversations with Bob Langert and I was very blunt. I said,  
20 Could you imagine a 60 Minutes story where they're looking at  
21 your production facility in Michigan, it's very -- very  
22 amazing, less than ten parts per million ammonia, and then you  
23 flash forward to the liquid side and you see birds that are at  
24 48 or less square inches, manure dropping on them or just the  
25 birds not in the same animal welfare condition, how would that



1 UEP, if they don't want to do it, they don't have to be a UEP  
2 member. So UEP is not a mandatory membership organization. I  
3 do know that.

4 Q. Did the 2002 guidelines or any other edition of the  
5 UEP Guidelines restrict in any way egg farmers' ability to  
6 expand their operations?

7 A. Not that I'm aware of, but I'm not an expert in that  
8 field.

9 Q. Once the Certified Program was rolled out, what became of  
10 the Scientific Advisory Committee?

11 A. Oh, we continued to work. We then set about developing  
12 guidelines for noncage, and so we wanted to do that because it  
13 was 98 percent cage; a few years later, it's 95 percent. It's  
14 probably about 90 percent. In 2008 California passed a  
15 referendum that said basically plain cages wouldn't work, and  
16 in 2018, they've now said clearly noncage. So a lot of  
17 different states changed in that regard.

18 That's another driver that was happening in multiple  
19 states, the activists were working state by state to try to  
20 get voters to vote against cages, gestation crates, various  
21 animal welfare. That was very active.

22 Q. Did the Scientific Advisory Committee continue to meet?

23 A. Yes, we continued to meet. When I left the committee in  
24 2011, Scotti Hester became chair. She retired and I believe  
25 Joy Mench is now chair of the committee.

1 Q. And did the committee continue to do further animal  
2 research to further animal welfare?

3 A. Yes.

4 Q. Were the guidelines and the UEP Certified Program  
5 designed to evolve and improve over time?

6 A. Oh, absolutely. The feeder space, the methods to induce  
7 a molt with nonfeed withdrawal, and then the future, being  
8 able to change the sex of the baby chicks when they're born,  
9 because right now half the chicks are born male, half are born  
10 female, and the male chicks are disposed. So if a scientist  
11 could develop a way to have all female chicks, that would be a  
12 very positive animal welfare perspective from a broad area.  
13 So there's a lot of research going on.

14 Q. Are you familiar with something called the 100% rule?

15 A. Yes.

16 Q. And was the 100% rule included in the Scientific Advisory  
17 Committee's 2000 recommendations?

18 A. No.

19 Q. Why not?

20 A. We anticipated that if UEP supported the guidelines as  
21 the board did very early on in 2000 in principal, they voted  
22 to accept the guidelines, that those guidelines were for all  
23 laying hens with regard to UEP. We never anticipated that it  
24 wouldn't be.

25 Q. Did you and the members of the Scientific Advisory

1 Committee believe that the 100% rule was necessary?

2 A. Absolutely.

3 Q. Why?

4 A. Because we did not believe it was humane for hens to be  
5 housed in those same conditions that we observed on our tour  
6 late in the last century, and we felt if we were going to be  
7 involved with science-based guidelines and evolving  
8 science-based guidelines, that it needed to be for all -- all  
9 hens. And I am very confident our committee would have walked  
10 and would have disbanded. They felt very strongly about that.  
11 They felt very strongly about all the areas, and that's why  
12 we're very proud that there was consistent agreement with UEP  
13 and the science over the long haul.

14 Q. In January 2006, was that the Scientific Advisory  
15 Committee's view on the 100% rule?

16 A. Yes, that's about the time.

17 Q. And did the Scientific Advisory Committee believe that  
18 science-based guidelines developed by the Scientific Advisory  
19 Committee and accepted by UEP should be viewed as minimum  
20 standards?

21 A. Yes.

22 Q. Did you believe that it was essential that egg production  
23 and cages follow science-based guidelines?

24 A. Yes. I believe that for several reasons. One is that I  
25 felt that the cage or an enriched cage which has a perch and a

1 nest box, I felt that was the most welfare-friendly, most  
2 holistic way to produce eggs, and if we did not implement the  
3 minimum in cages, that that would be lost. And it's probably  
4 lost now.

5 In California it's now noncage. And in a noncage  
6 operation, two times as many birds die that is in an enriched  
7 cage or a cage system. And what's happened is the view of  
8 being able to exhibit natural behaviors is a bigger issue than  
9 whether the bird dies or not, and that's where public  
10 perception -- McDonald's made that decision, for example, and  
11 they had research data showing all the aspects that we just  
12 talked about, and Europe has a big influence on that as well.  
13 The EU banned cages several years ago.

14 Q. Did the Scientific Advisory Committee in 2006 believe it  
15 was critical that all hens be managed using science-based  
16 guidelines?

17 A. Yes.

18 Q. And did the Scientific Advisory Committee at that time  
19 believe that the failure to adhere to the minimum guidelines  
20 would be inconsistent with the humane treatment of hens?

21 A. Yes.

22 Q. And did you believe that treating all hens consistent  
23 with the minimum space guidelines was the right thing to do?

24 A. Absolutely.

25 Q. And did the Scientific Advisory Committee have a strong

1 opinion that if industry failed to adhere to those minimum  
2 guidelines, the Government would impose stricter mandatory  
3 guidelines or ban cages altogether?

4 A. Yes.

5 Q. And did the Scientific Advisory Committee view it as  
6 inappropriate to produce eggs in a manner inconsistent with  
7 the minimum guidelines?

8 A. Yes.

9 Q. Did the Scientific Advisory Committee believe at that  
10 time that UEP had adopted the Scientific Advisory  
11 Committee's core recommendations?

12 A. Yes.

13 Q. And did you give notice to UEP in January 2006 of those  
14 views?

15 A. I did.

16 Q. How did you give notice to UEP?

17 A. I sent several communications to UEP and anything that I  
18 would send was always reviewed by the committee and whether I  
19 signed it or everyone signed it, it was the voice of the  
20 committee. And so we laid out in no uncertain terms our view  
21 on the 100% rule. We also addressed, as we discussed earlier,  
22 backfilling. And we were very clear about it.

23 Q. Dr. Armstrong, I'd like you to take a look at the  
24 document that is behind Tab 7 in your binder. And  
25 specifically the document that's at pages 3, 4, and -- I guess

1 BY MS. SUMNER:

2 Q. Dr. Armstrong, if we could look at page 3 of this  
3 document, please.

4 A. Mine's not numbered. So is that like 1835 down in the  
5 bottom right corner?

6 Q. Yes, it is 1835, exactly. And I'd like you to  
7 specifically focus on the first paragraph, which notes: This  
8 communication is provided on behalf of the Scientific Advisory  
9 Committee. Is that correct?

10 A. Um-hum. Yes. That's correct.

11 Q. And then I'd like you to turn to the next page which is  
12 the one that ends in 836. It's page 4 of the exhibit.

13 A. Um-hum.

14 Q. And focus on the first full paragraph there.

15 Is this the paragraph in which you gave notice to  
16 UEP of the Scientific Advisory Committee's view that failure  
17 to adhere to the Scientific Advisory Committee's minimum  
18 guidelines is not consistent with the humane treatment of  
19 laying hens?

20 A. Yes.

21 Q. And then I'd like to focus your attention on the first  
22 bullet at the bottom of the page there, the same page.

23 A. Yes.

24 Q. And is this where you communicated to UEP the Scientific  
25 Advisory Committee's belief that the UEP board has accepted

1 the Scientific Advisory Committee's core recommendations in  
2 2000 and that while the recommendations have been refined over  
3 time, those core recommendations and their acceptance by UEP  
4 have not changed?

5 A. Yes. And that's what I related several times today. The  
6 core recommendations were accepted early on.

7 Q. So we just covered -- you can put that document to the  
8 side -- how you informed UEP in January 2006 that the  
9 Scientific Advisory Committee believed that the Animal Welfare  
10 Guidelines should apply to all hens.

11 Did you believe that UEP was committed to the  
12 Scientific Advisory Committee's science-based recommendations?

13 A. Yes. We believed that for the most part, but we felt  
14 there were animal activists as well as some members that were  
15 pushing back.

16 Q. And did there come a time when you learned that others in  
17 the egg industry were attempting to develop a program that was  
18 based upon the Scientific Advisory Committee's recommendations  
19 but among other differences would not apply to 100 percent of  
20 a farmer's hens?

21 A. Yes.

22 Q. And was this an alternative program using the USDA  
23 Process Verified seal?

24 A. Yes.

25 Q. Will you understand what I mean if I refer to that

1 program as the PVP program?

2 A. Yes.

3 Q. Did you have an understanding at the time who was  
4 spearheading the approach for that competing program?

5 A. Yes.

6 Q. And who -- what was your understanding?

7 A. Garth Sparboe.

8 Q. Did you and the Scientific Advisory Committee oppose this  
9 approach?

10 A. Yes.

11 Q. Why?

12 A. Because for the same reason, the 100% rule, the same  
13 reason for backfilling that we felt Animal Welfare Guidelines  
14 were a science-based conservative minimum and not a marketing  
15 tool. Of course you would use it to let people know that your  
16 birds were treated well, but we felt that that minimum level  
17 was a very conservative minimum level.

18 Q. Did you believe that such a program would threaten the  
19 credibility of the science-based guidelines that you helped  
20 develop for UEP?

21 A. We believed that it threatened the credibility of the  
22 science-based guidelines and also threatened the history of --  
23 over the long haul.

24 Q. Was it the Scientific Advisory Committee's belief that  
25 any program approved by either UEP or the USDA should require



1 100 percent implementation and apply to all hens?

2 A. Yes, the committee was unanimous in that.

3 Q. And did you give notice of your thoughts to UEP?

4 A. Multiple times.

5 Q. Okay. And how did you do that?

6 A. Well, first verbally and then various letters. I can't  
7 remember -- recall the number, but we stated our opinion on a  
8 number of occasions.

9 Q. Dr. Armstrong, I'd like you to turn to Tab 8 in your  
10 binder. This is Defendants' Exhibit 690.

11 Is this a letter in which you gave notice to UEP of  
12 the beliefs we just discussed?

13 A. Yes.

14 MS. SUMNER: And, Your Honor, I'd like to offer  
15 Defendants' 690 into evidence at this time.

16 MR. BLECHMAN: Your Honor, we have no objection.

17 THE COURT: 690's admitted.

18 (Exhibit received in evidence.)

19 MS. SUMNER: May I publish it to the jury?

20 THE COURT: Yes.

21 BY MS. SUMNER:

22 Q. Dr. Armstrong, are the views expressed in this letter  
23 those of the Scientific Advisory Committee as well as your  
24 own?

25 A. Yes.

1 Q. I'd like to direct your attention to the second full  
2 paragraph on page 2, which starts with the words: It has come  
3 to our attention.

4 A. Yes.

5 Q. Is this where you expressed the Scientific Advisory  
6 Committee's opposition to a PVP program that resulted in fewer  
7 than 100 percent of hens being subject to science-based  
8 guidelines?

9 A. Yes, in this case, we were objecting to the PVP program,  
10 but we were opposed to that in any situation with UEP.

11 Q. And can you read to the jury what you wrote to UEP in  
12 that paragraph, please.

13 A. It has come to our attention that individuals within the  
14 industry are attempting to develop a program that would use  
15 the USDA Process Verified seal but result in less than 100  
16 percent of the hens subject to science-based guidelines. In  
17 other words, a given producer or company would not be required  
18 to maintain all hens under science-based guidelines. We are  
19 adamantly opposed to this approach. We view the UEP  
20 Guidelines as grounded in sound science that represents the  
21 threshold for maintaining caged layers humanely. Housing hens  
22 at less than UEP minimum standards is neither scientifically  
23 justified nor humane. Consequently, we believe any producer  
24 or company marketing eggs bearing either the UEP Certified or  
25 USDA Process Verified seal is making a statement about the

1 company and the care provided to 100 percent of the hens, not  
2 just a few.

3 Q. Thank you, Dr. Armstrong. I'd like you to focus on the  
4 next paragraph that begins with: It is our collective and  
5 firm belief.

6 Do you see that?

7 A. Yes.

8 Q. Is this where you explained further to UEP why the  
9 Scientific Advisory Committee opposed this approach of a  
10 program that would not apply to 100 percent of egg-laying  
11 hens?

12 A. Yes, we stated that, number one, it threatens the welfare  
13 of laying hens, and, also, it threatens overall credibility of  
14 our science-based guidelines.

15 The other thing that I want everybody to be aware of  
16 is, most -- most of us worked at land-grant universities that  
17 had a strong connection with USDA. So that is another --  
18 United States Department of Agriculture. So we were also  
19 concerned about the credibility of the USDA. Which we are  
20 also connected with from a university perspective.

21 Q. Now, at any time, did anyone ever ask you or the  
22 Scientific Advisory Committee to reject the PVP because of its  
23 potential impact on flock size or egg supply?

24 A. No, and that was never discussed by the committee.

25 Q. Now, after 2006, did the issue of whether the Animal

1 today?

2 A. No one has yet. I hope it's -- I hope --

3 Q. Do you anticipated that someone will pay for your  
4 expenses?

5 A. My expenses will be paid by the law firm, UEP, whomever.

6 Q. Are you here today voluntarily, Dr. Armstrong?

7 A. Yes.

8 Q. And finally, can you please tell the jury why you're here  
9 today voluntarily?

10 A. Well, this committee started in 1999, and we're still  
11 colleagues and friends, and we all felt deeply about a lot of  
12 things happening in animal agriculture and the opportunity to  
13 work with the egg industry was very exciting from a  
14 professional perspective because it was clear that they were  
15 willing to make changes. And they had demonstrated their  
16 faith in research based on the cholesterol issue, and we had a  
17 good group of people that -- wish it were possible for you to  
18 hear from every one of them -- but we firmly believe in what  
19 we were doing and very much focused on the science and what we  
20 do to try to make life better. So I'm here today because of  
21 the credibility of that group of scientists, I'm here today  
22 because of the credibility of the Scientific Advisory  
23 Committee; just independently, the science side is independent  
24 of UEP but it's certainly culled by UEP and we care deeply  
25 about that. And if at any time something other than